

THE HONORABLE ROBERT S. LASNIK

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

KRISTA PEOPLES, an individual,

Plaintiff,

v.

UNITED SERVICES AUTOMOBILE
ASSOCIATION and USAA CASUALTY
INSURANCE COMPANY,

Defendants.

No. 2:18-cv-01173-RSL

CLASS ACTION

FIRST AMENDED COMPLAINT FOR
VIOLATION OF CONSUMER
PROTECTION ACT CHAPTER 19.86
RCW

JURY TRIAL DEMANDED

I. INTRODUCTION

Plaintiff, Krista Peoples, individually and on behalf of all members of the Class of similarly situated Washington health care providers, allege the following Complaint and causes of action against United Services Automobile Association and USAA Casualty Insurance Company ("Defendants" or "USAA").

II. PARTIES

1. Plaintiff Krista Peoples is a Washington resident. Ms. Peoples was injured in an auto accident occurring on September 26, 2015, in Seattle, King County, Washington. Ms. Peoples resides in Seattle, King County, Washington.

2. Defendants United Services Automobile Association and USAA Casualty Insurance Company are foreign insurance companies that are licensed to do business in Washington and did business in Washington and King County during the time period

1 at issue. As used herein, "USAA" refers to the Defendant corporations, United
2 Services Automobile Association and USAA Casualty Insurance Company. USAA has
3 sold and/or underwritten automobile insurance policies in Washington that provided
4 Personal Injury Protection ("PIP") coverage requiring the payment of "all reasonable
5 and necessary" medical expenses incurred by a covered person arising from a covered
6 accident within the meaning of the PIP statute, Chapter 48.22 RCW.

7 **III. JURISDICTION AND VENUE**

8 3. Defendants removed this action to this Court from the King County
9 Superior Court pursuant to 28 U.S.C. §§ 1332(d), 1446, and 1453, alleging that the
10 Court has jurisdiction under the Class Action Fairness Act, along with diversity of
11 citizenship between Plaintiff and Defendants. Defendants allege the amount in
12 controversy exceeds \$5,000,000..

13 4. During the time period at issue, USAA did and continues to do substantial
14 business within King County, Washington.

15 5. Defendants allege that venue is proper in the Western District of
16 Washington pursuant to 28 U.S.C. §1391(2) as a substantial part of the events or
17 omissions giving rise to the claims herein occurred in King County, Washington.

18 **IV. FACTUAL ALLEGATIONS**

19 **A. Plaintiff's individual factual allegations**

20 6. Plaintiff re-alleges and incorporates the allegations set forth in
21 paragraphs 1 through 5 above.

22 7. On September 26, 2015, Plaintiff was merging onto the on-ramp of
23 northbound SR 99, near Bell Street, in Seattle, King County, Washington.

24 8. While yielding for traffic ahead, the vehicle behind Ms. Peoples failed to
25 slow down and crashed into Ms. Peoples's vehicle.

1 9. Plaintiff suffered injuries as a result of the crash and continues to have
2 pain due to crash-related injuries.

3 10. Plaintiff's vehicle sustained substantial damage.

4 11. At the time, Ms. Peoples was insured by USAA through an automobile
5 policy that contained PIP coverage.

6 12. The PIP coverage provided for payment of reasonable and necessary
7 medical expenses.

8 13. The policy states that USAA will pay its insured's medical and hospital
9 benefits, which consists of medical payment fees for medically necessary and
10 appropriate medical services.

11 14. Medical payment fees are defined to mean any amount that USAA wants
12 to pay.

13 15. The policy also states that USAA will pay the lesser of either the actual
14 amount billed or a reasonable fee for the service provided.

15 16. A fee is defined as reasonable if it falls within the range of fees generally
16 charged for the service in the geographic area.

17 17. Under the PIP statute, PIP coverage requires payment of "all reasonable
18 and necessary" medical expenses. See RCW 48.22.005(7)

19 18. Under insurance regulations, WAC 284-30-330 *et seq*, insurers are
20 required to adopt and implement reasonable procedures for investigating PIP
21 insurance claims before refusing to pay them in full.

22 19. Under insurance regulations, WAC 284-30-330 *et seq*, insurers are
23 required to independently investigate a PIP insurance claim before refusing to pay it in
24 full.

25 20. Under insurance regulations, WAC 284-30-330 *et seq*, insurers are
26 prohibited from misrepresenting facts relating to coverage and payment on a PIP claim.
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1 21. Plaintiff sought and received medical treatment for her injuries.

2 22. The medical treatment Ms. Peoples received was causally related to her
3 injuries.

4 23. The medical treatment Ms. Peoples received was reasonable and
5 necessary.

6 24. As a result of receiving medical treatment and services for her injuries,
7 Ms. Peoples incurred medical expenses.

8 25. USAA directs its insureds to have their providers bill USAA for treatment
9 and or directed insureds' providers to bill USAA directly rather than the patient or
10 insured.

11 26. Ms. Peoples's medical treatment providers submitted bills for medical
12 expenses incurred by Ms. Peoples to USAA.

13 27. USAA refused to pay the medical expense bills in full submitted by Ms.
14 Peoples's medical treatment providers.

15 28. USAA refused to pay the medical expense bills in full even though the
16 bills submitted were the result of reasonable and necessary medical expenses.

17 29. USAA refused to pay the medical expense bills in full even though Ms.
18 Peoples's had benefits under her policy that had not been exhausted at the time the
19 bills were submitted.

20 30. For instance, on bills sent to USAA by Ms. Peoples's providers, USAA
21 sent those providers an Explanation of Reimbursement ("EOR").

22 31. The EOR identified the service provider's name and billing address, the
23 billing provider's name and billing address, the patient, the date of service, the CPT
24 number for the treatment service billed, a description of the treatment service, the units
25 of the treatment being billed, the billed amount, and the "REIM Amount," for the
26 reimbursement amount.

32. On those EORs where USAA refused to pay Ms. Peoples's medical treatment providers in full, the EOR stated, in pertinent part, that the bill "exceeded a reasonable amount for the service provided." See **Exhibit 1** attached hereto.

33. However, USAA conducted no independent investigation into the reasonableness of the bill before refusing to pay it in full.

34. USAA relied solely and exclusively on an automated and arbitrary computerized bill review by a third-party, Auto Injury Solutions ("AIS"). The computer generated an EOR stating that the billed amount "exceeded a reasonable amount for the service provided." USAA's practice of having AIS do automated computerized reviews and denials based on an EOR stating that the billed amount "exceeded a reasonable amount for the service provided" added an additional term or condition for payment that the billed amount be less than an arbitrary amount set by the computer.

35. USAA did not know or investigate the identify, background, credentials, experience, or any other personal characteristic of the individual provider treating Ms. Peoples or those others in the area before refusing to pay the bill in full.

36. USAA did not know or investigate whether the full amount billed exceeded the maximum reasonable amount for similar providers with similar years of experience or credentials in the city or location where the service was provided.

37. Ms. Peoples sustained injury and economic damages as a direct and proximate result of USAA's failure to pay her medical expense bills in full, including damages and injury caused by the underpayment of her bills, nonpayment of her bills, and/or delay in payment of her bills.

38. USAA also denied total payment on some of Ms. Peoples's medical treatment bills.

1 39. On the EORs at issue, USAA denied payment on Ms. People's medical
2 treatment bills prior to determining whether the bill was reasonable and necessary.
3 See **Exhibit 2** attached hereto.

4 40. On the EORs at issue, USAA claimed that a provider's diagnosis did not
5 "support" the service, the submitted documentation "does not support the medical
6 necessity and/or relatedness of the treatment to the loss following an apparent lapse in
7 treatment, or "Prior review of the submitted documentation did not substantiate the
8 need for continued" therapy.

9 41. However, these statements were false.

10 42. USAA made a decision to deny the bill prior to evaluating the bill for any
11 of the reasons identified in the EORs at issue.

12 43. Prior to denying the bill, USAA did not know or investigate the identity,
13 background, credentials, experience, or any other personal characteristic of the
14 provider treating Ms. Peoples or those others in the area.

15 44. Prior to denying the bill, USAA did not contact or communicate with the
16 provider to discuss Ms. Peoples's treatment, the reasonableness of the bill, or the
17 medical necessity of the treatment.

18 45. Prior to denying the bill, USAA did not contact or communicate with the
19 provider regarding whether additional information was necessary to evaluate the bill.

20 46. Prior to denying the bill, USAA did not contact or communicate with the
21 provider to identify specific information that was necessary to evaluate the.

22 47. Prior to denying the bill, USAA did not contact or communicate with its
23 insured to evaluate her background or any other personal characteristics concerning
24 her treatment, the reasonableness of the bill, or the medical necessity of the treatment.

25 48. Prior to denying the bill, USAA did not contact or communicate with its
26 insured regarding whether additional information was necessary to evaluate the bill.
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1 49. Prior to denying the bill, USAA did not contact or communicate with its
2 insured to identify specific information that was necessary to evaluate the bill.

3 50. In denying payment on these bills, USAA relied on a computer program
4 that automatically flags certain bills for denial.

5 51. These flags include arbitrarily and automatically denying bills where there
6 is a 90-day gap in treatment or when the insured has exceeded 13 treatments for
7 certain CPT procedures.

8 52. USAA refused to pay these bills even though Ms. Peoples's providers
9 determined that the treatments were reasonable and necessary.

10 53. USAA's practices proximately caused Ms. Peoples to sustain injury and
11 economic damages.

12 **B. Putative class allegations**

13 54. Plaintiff re-alleges the facts set forth in paragraphs 1 through 37 as if fully
14 set forth in support of the claims of the Putative Class.

15 55. From at least September 1, 2015 to July 5, 2018, more than 1,100
16 Washington insureds submitted reasonable medical expense bills for payment under a
17 USAA PIP policy that reserved the right to pay any amount of its insureds' medical
18 payment fees.

19 56. From at least September 1, 2015 to July 5, 2018, more than 1,100
20 Washington insureds submitted reasonable medical expense bills for payment under a
21 USAA PIP policy that paid medical payment fees that were either the lesser of the
22 actual amount billed or a reasonable fee for the service provided.

23 57. In the policy, a fee is defined to be reasonable if it falls within the range of
24 fees generally charged for the service in the geographic area.

1 58. USAA insureds had their payments reduced based solely and exclusively
2 on a computer program. This putative Class consists of residents of multiple counties
3 in Washington and is geographically diverse.

4 59. The bills submitted for payment to USAA by this putative Class of more
5 than 1,100 Washington insureds and had their payments reduced solely and
6 exclusively on a computer program were reasonable.

7 60. From at least September 1, 2015, to July 5, 2018, on those bills at issue,
8 USAA stated in EORs that the bill exceeded a “reasonable amount for the service
9 provided.”

10 61. Whenever the EOR stated that the basis for denying full payment of the
11 amount billed for a CPT procedure was that the bill “exceeded a reasonable amount for
12 the service provided,” the process for denying payment was the same. The process
13 was that USAA relied solely and exclusively on an automated and arbitrary
14 computerized bill review Auto Injury Solutions (“AIS”). The computer generated an
15 EOR stating that the billed amount “exceeded a reasonable amount for the service
16 provided.” USAA’s practice of having AIS do automated computerized reviews and
17 denials based on an EOR stating that the billed amount “exceeded a reasonable
18 amount for the service provided” added an additional term or condition for payment that
19 the billed amount be less than an arbitrary amount set by the computer.

20 62. The billed amounts were the provider’s usual and customary charge for
21 the CPT procedure billed to auto insurers and paid by other auto insurers who did not
22 use the computer program used by USAA.

23 63. USAA processed, reduced, and paid the bills of the putative Class of
24 more than 1,100 Washington insureds using the same common practices and
25 procedures that were applied to bills submitted by Ms. Peoples and reduced based
26 solely and exclusively on an automated computerized review of bills by AIS.

1 64. The average reduction on each EOR stating that the bill exceeded a
2 “reasonable amount for the service provided” averaged less than \$20.

3 65. The average individual claim of the putative Class of more than 1,100
4 insureds for underpayments of their bills based solely on EORs stating that the bill
5 exceeded a “reasonable amount for the service provided” is likely to be small and less
6 than \$200. The time it would take insureds to contest the reductions makes it
7 economically infeasible and/or impracticable to do so because the average individual
8 reductions are so small.

9 66. The time it would take insureds to contest the reductions or submit
10 additional information to USAA cannot be justified as well because USAA would not
11 and does not consider any such protests or additional information that would be
12 submitted to support the reasonableness of the provider’s charge for the CPT
13 procedure billed. There is no information that a Washington provider could submit to
14 USAA that would cause USAA to pay the billed amount in full when the billed amount
15 has been reduced based solely and exclusively on a computer program other than the
16 insured informing USAA that the insured’s provider has commenced action against the
17 insured to be paid the difference between the amount billed and the amount paid by
18 USAA.

19 67. Prior to paying insureds’ providers less than the full amount billed, USAA
20 had not entered into a contract with the provider to accept less than the provider’s
21 usual and customary charge for the services billed other auto insurers.

22 68. USAA had not entered into any contract with the provider to accept less
23 than the market rate for the services provided, defined as the amount a willing patient
24 would pay on the open market for the services.

25 69. Nor did USAA offer to pay the provider in cash, in full, at the time of
26 service.

1 70. USAA did not have a practice of offering to pay providers a reduced
2 “cash rate” at the time of service.

3 71. The amount paid was not based on a fee schedule set by the State of
4 Washington.

5 72. When USAA paid providers treating the putative Class of more than
6 1,100 Washington less than the full amount billed, the USAA claims representative or
7 adjustor assigned to the claim did not independently investigate whether the amount
8 billed was a reasonable amount for the provider to charge for the CPT procedure.

9 73. Before USAA sent the reduced check or payment to those providers, no
10 one else at USAA made such an investigation.

11 74. In paying providers treating the putative Class of more than 1,100
12 Washington insureds less than the full amount billed based, the person who made the
13 payment for USAA relied solely on a “Reim Amount” set out in the EOR as the amount
14 to pay the provider for the CPT procedure billed.

15 75. USAA’s practices of making automatic reductions to the bills submitted by
16 the providers treating the putative Class of more than 1,100 Washington insureds were
17 a mere sham used by USAA to avoid its affirmative duty to pay all reasonable medical
18 expense bills submitted and to conduct a reasonable investigation of the provider’s PIP
19 claim for reimbursement before denying full payment. The practices were a mere
20 sham because USAA’s practices systematically, consistently and repeatedly underpaid
21 providers and resulted in USAA systematically, consistently and repeatedly failing to
22 make “payments of all reasonable” medical expenses under its PIP policy as required
23 by the Washington PIP statute.

24 76. The total amount in controversy on the claims of the members of the
25 class described in this Complaint is substantially less than Five Million Dollars
26 (\$5,000,000). The maximum amount of all damages, treble or exemplary damages,
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costs and attorney fees, and/or any other relief awardable under Washington law is less than Five Million Dollars (\$5,000,000).

77. Plaintiff is a member of the Class of 1,100 Washington insureds described above.

a) Civil Procedure Rule 23 Allegations

78. Plaintiff brings this action as a Class Action for damages sustained by Plaintiff and the putative Class of Washington insureds described above pursuant to Rule 23(a) and(b)(3) of the Washington State Superior Court Civil Rules. Plaintiff seeks to certify the following Class:

All Washington insureds who from September 1, 2015 to July 5, 2018 ("Class period") had their PIP claims for reimbursement of medical expenses reduced by Defendant USAA based solely on an Explanation of Reimbursement ("EOR") form sent to the insured's provider stating that the bill exceeded a "reasonable amount for the service provided".

79. **CR 23(a)(1):** Class certification is proper under CR 23(a) (1) because the members of the class total more than 1,100 insureds and the insureds are geographically dispersed over numerous cities and counties in the state of Washington.

80. Because of the number of Class members and their geographic dispersion, individual joinder of each putative Class member is not practicable.

81. **CR 23(a)(2):** Class certification is proper under CR 23(a)(2) because USAA applied a common practice of making reductions to the bills of all Class members over the class period from September 1, 2015 to July 5, 2018. USAA's practices raise questions of law and fact common to all members of the Class including:

a. Whether USAA's practice of making reductions to class member bills was based on an automated computer review to limit payments on Washington PIP claims.

- 1 b. Whether USAA relied solely and exclusively on an automated and arbitrary
2 computerized bill review by a third-party, Auto Injury Solutions (“AIS”).
- 3 c. Whether the AIS computer generated an EOR stating that the billed amount
4 “exceeded a reasonable amount for the service provided.”
- 5 d. Whether USAA’s practice of having AIS do automated computerized reviews and
6 denials based on an EOR stating that the billed amount “exceeded a reasonable
7 amount for the service provided” added an additional term or condition for
8 payment that the billed amount be less than an arbitrary amount set by the
9 computer.
- 10 e. Whether it was USAA’s practice when making reductions to rely on the “REIM
11 amount” set out by AIS’s computer in a draft EOR and to not have USAA
12 adjusters or representatives independently investigate if the full amount billed by
13 the provider was reasonable in the provider’s specific location or medical market
14 or the full amount billed was reasonable for that provider to charge for the CPT
15 procedure given the provider’s background, experience and individual
16 characteristics.
- 17 f. Whether USAA’s practice of having AIS’s computer do automated denials and
18 reductions of provider bills violated the requirement in the PIP statute, RCW
19 48.22.005(7) because the practice resulted in USAA systematically, consistently
20 and repeatedly failing to make “payments for all reasonable” medical expenses
21 submitted on PIP claim.
- 22 g. Whether USAA’s practice of having AIS’s computer do automated denials and
23 reductions of provider bills violated the requirement in WAC § 284.30.330 *et seq.*
24 that insurers adopt and implement reasonable procedures for investigating PIP
25 insurance claims before denying full payment to insured’s providers because the
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1 practice resulted in USAA systematically, consistently and repeatedly using a
2 procedure that does not determine reasonable provider fees.

3 h. Whether USAA's practice of having AIS's computer do automated denials and
4 reductions of provider bills violated the requirement in WAC § 284.30.330 *et seq.*
5 that insurers conduct a reasonable investigation of a PIP insurance claim for
6 payment of all reasonable medical expenses before sending an insured's
7 provider a reduced check that denies full payment because the practice resulted
8 in USAA systematically, consistently and repeatedly using a procedure that could
9 not determine reasonable provider fees and resulted in USAA systematically,
10 consistently and repeatedly failing to make "payments for all reasonable" medical
11 expenses submitted on PIP claims.

12 i. Whether USAA's practice of using an EOR that represented a reimbursement
13 amount that was reduced was based on a determination that the amount billed
14 exceeded "a reasonable amount for the services provided" violated the provision
15 of WAC § 284.30.330 *et seq.* barring insurers from misrepresenting facts relating
16 to their payment of insurance claims because the program USAA relied upon
17 cannot determine the maximum reasonable charge for any CPT procedure in any
18 Washington area.

19 j. Whether USAA's practices of having AIS's computer do automated denials and
20 reductions of provider bills or using a misleading EOR constituted unfair practices
21 that violated the Washington Consumer Protection Act, RCW 19.86 *et seq.*

22 k. Whether USAA's practices were unfair practices under the standards adopted by
23 Washington Courts including whether the practices were unfair because there
24 were no benefits to insureds from USAA's practices that substantially outweighed
25 the detriment to them and they could not avoid having their bills reduced.

- 1 I. Whether USAA's practices were unfair CPA practices in relationship to the
2 applicable Washington law and regulations relating to the payment of PIP
3 insurance claims, including RCW 4.22.005(7) and WAC § 284.30.330 *et seq.*
- 4 m. Whether Class members sustained injury to their business caused by USAA's
5 practice in the form of reduced payments, investigative costs, and out-of-pocket
6 expenses, or in some other manner.
- 7 n. Whether USAA entered into agreement to provide PIP coverage and pay its
8 insureds' medical and hospital benefits, including medical payment fees for
9 medically necessary and appropriate medical services, and defined such medical
10 payment fees as any amount that USAA wants to pay.
- 11 o. Whether USAA entered into agreement to provide PIP coverage and pay its
12 insureds the lesser of either the actual amount billed or a reasonable fee for the
13 service provided and defined a fee as reasonable if it falls within the range of
14 fees generally charged for that service in the geographic area.
- 15 p. When USAA does not pay the actual amount an insured's provider billed,
16 whether USAA pays all reasonable fees that fall within the range of fees
17 generally charged for that service in the geographic area.
- 18 q. Whether USAA's failure to pay the lesser of either the actual amount an insured's
19 provider billed or all reasonable fees that fall within the range of fees generally
20 charged for the service in the geographic area is a breach of contract.
- 21 r. Whether USAA's breach of its policy to pay its insureds either the lesser of the
22 actual amount billed or all reasonable fees that fall within the range of fees
23 generally charged for the service in the geographic area caused damages to
24 Plaintiff and Class members.
- 25 s. Whether USAA's reservation of the right to pay medical payment fees in any
26 amount USAA wants is contrary to Washington law as set forth herein.
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1 82. **CR 23(a)(3):** Class certification is proper under CR 23(a)(3) because
2 Plaintiff's claims are typical of the claims of the members of the putative class and
3 USAA's defenses to the claims of Plaintiff are also typical of the defenses to such
4 claims. The claims and defenses are typical because they arise out of the same
5 common policies and practices which USAA applied to all of the putative Class of more
6 than 1,100 Washington insureds described above. The claims arise from the same
7 alleged unfair scheme undertaken by USAA to deprive Washington insureds of full
8 benefits under their PIP policies because whenever the EOR states that the REIM
9 amount is less than the amount billed and the explanation given is that the amount
10 "exceeds a reasonable amount" USAA used the same allegedly unfair practice in
11 denying full payment of the bill.

12 83. **CR 23(a)(4):** Class certification is proper under CR 23(a)(4) because
13 Plaintiff can fairly and adequately represent the interests of the other members of the
14 Class. Plaintiff has no interests that are antagonistic to the interests of the putative
15 Class. Plaintiff and the Class have the same interest in seeking full payment of all bills
16 that were reduced based solely and exclusively on a computer program. Plaintiff
17 retained skilled attorneys who have represented claimants and class members with
18 similar claims to those brought in this lawsuit. Plaintiff's counsel have been appointed
19 Class counsel in previous cases involving PIP claims and insurers' reliance upon
20 computer programs to solely and exclusively reduce payments to insureds' providers.

21 84. **CR 23(b)(3):** Class certification is proper under CR 23(b)(3) because the
22 questions of law and fact common to the class, as set forth above predominate over
23 any questions affecting only individual members of the class. Common questions
24 predominate because USAA undertook a common course of conduct towards all
25 members of the class of Washington insureds and applied its practices at issue to all
26 bills submitted under its PIP coverage during the class period.

1 85. Class certification is proper under CR 23(b)(3) because a class action is
2 a superior method for adjudicating the claims of the members of the class than more
3 than 1,100 individual actions in numerous cities and counties of Washington that raise
4 the identical factual and legal issues concerning USAA's PIP processing and payment
5 practices.

6 86. Class certification is a superior method of adjudicating the claims
7 because the individual class members have little interest in individually controlling the
8 prosecution of their claims. The average amount of the individual claims in controversy
9 is likely to be less than \$200.

10 87. The class members are busy individuals who have limited time to devote
11 to the prosecution of their individual claims.

12 88. Class certification is a superior method of adjudicating the claims
13 because there is no significant individual litigation already commenced by Washington
14 insureds against USAA raising the identical claims.

15 89. Class certification is a superior method of adjudicating the claims
16 because it is desirable to concentrate the litigation and claims in a single forum to avoid
17 duplicity of actions and inconsistent adjudications of identical claims. King County is a
18 desirable forum for litigation of the class claims because it is the County in which most
19 class members are located and where the Defendants' in-state witnesses are likely
20 located. The cost to the court system of the various counties where class members
21 are located would be substantial if the claims were adjudicated on an individualized
22 basis.

23 90. Class certification is a superior method of adjudicating the claims
24 because there are few difficulties likely to be encountered in the adjudication of the
25 class members' legal claims. The King County Superior Court certified a litigation class
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1 that alleged similar claims in prior litigation. The common liability issues were tried to a
2 jury on a class basis and a verdict entered.

3 **V. PLAINTIFF'S INDIVIDUAL CLAIMS**

4 **A. Cause of Action: Violation of the Consumer Protection Act**

5 91. Plaintiff re-alleges each and every allegation as set forth in paragraphs 1
6 through 53.

7 92. USAA's practice of denying any and all payments to Plaintiff's providers
8 on medical expenses that were reasonable violated the requirement in the PIP statute,
9 RCW 48.22.005(7), to make payments of "all" reasonable medical expenses submitted.

10 93. USAA's practice of denying any and all payments to Plaintiff's providers
11 on medical expenses that were reasonable violated WAC 284-30-330 *et seq.* that
12 required USAA to adopt and implement reasonable procedures for investigating PIP
13 insurance claims before refusing to pay them in full.

14 94. USAA's practice of denying any and all payments to Plaintiff's providers
15 on medical expenses that were reasonable" violated WAC 284-30-330 *et seq.* that
16 required USAA to independently investigate a PIP insurance claim before refusing to
17 pay it in full.

18 95. USAA's practice of having AIS do automated computerized reviews and
19 denials based on an EOR stating that the billed amount "exceeded a reasonable
20 amount for the service provided" added an additional term or condition for payment that
21 the billed amount be less than an arbitrary amount set by the computer.

22 96. USAA's practice of having AIS do automated computerized reviews and
23 denials based on USAA using a 90 day gap in treatment or 13th treatment flag added
24 an additional term or condition for payment that the billed procedure had to be within a
25 90 day period after the accident or after the last treatment and/or that there had to be
26 less than 13 treatments.

1 97. USAA's practice of falsely claiming a provider's diagnosis did not
2 "support" the service, the submitted documentation "does not support the medical
3 necessity and/or relatedness of the treatment to the loss following an apparent lapse in
4 treatment, or "Prior review of the submitted documentation did not substantiate the
5 need for continued" therapy violated the requirement in WAC 284-30-330 *et seq.* to not
6 misrepresent facts relating to coverage and USAA's payment of the PIP claim

7 98. USAA's practices occurred in the course of its business and commerce.

8 99. USAA's practices were part of a generalized course of conduct repeated
9 on thousands of occasions when provider bills were submitted to USAA for payment
10 under its PIP coverage over the pertinent class period.

11 100. USAA's practice affected the public interest.

12 101. The business of insurance affects the public interest. RCW 48.01.030.

13 **B. Cause of Action: Breach of Contract**

14 102. USAA entered into an insurance agreement with Plaintiff that provides
15 that USAA will pay its insureds' medical and hospital benefits, which consists of
16 medical payment fees for medically necessary and appropriate medical services.

17 103. The policy defines medical payment fees to mean any amount that USAA
18 wants to pay.

19 104. The policy also states that USAA will pay the lesser of either the actual
20 amount billed or a reasonable fee for the service provided.

21 105. A fee is defined as reasonable if it falls within the range of fees generally
22 charged for a service in the geographic area.

23 106. However, even where USAA does not pay the actual amount billed, it
24 also does not pay all reasonable fees for the service provided as the term is defined in
25 the policy.

1 107. USAA does not pay all reasonable fees within the range of fees generally
2 charged for a service in the geographic area.

3 108. The database USAA relies upon to implement its RF methodology does
4 not ensure that USAA pays all fees that fall within the range of fees generally charge
5 for that service in the geographic area; rather, the database is based on a sample of
6 Medicare enrollees nationwide.

7 109. USAA's failure to pay either the lesser of either the actual amount billed
8 or a reasonable fee for the service provided as reasonable fees are defined in the
9 policy constitutes a breach of the policy agreement.

10 110. USAA's breach of the policy agreement proximately caused damage to
11 Plaintiff.

12 **C. Plaintiff's Damages on Individual Claims**

13 111. As a direct and proximate result of USAA's wrongful conduct described in
14 paragraphs 1 through 53 and 91 through 110, Plaintiff sustained injury to her property
15 and damages in an amount to be established at trial.

16 112. The injury and damages sustained by Plaintiff include, but are not limited
17 to, investigative expenses and out-of-pocket costs incurred as a result of USAA's
18 wrongful conduct.

19 113. Plaintiff's individual claim is more than \$210 but substantially less than
20 \$60,000.

21 **VI. CLASS CLAIMS**

22 **A. Cause of Action: Violation of the Consumer Protection Act**

23 114. Plaintiff re-alleges each and every allegation as set forth in paragraphs 1
24 through 37 and 54 through 90 above.

25 115. USAA's practice over the class period of denying full payment as set forth
26 in EORs stating that the bill exceeded a "reasonable amount for the service provided"

1 violated the requirement in the PIP statute, RCW 48.22.005(7), to make payments of
2 “all” reasonable medical expenses submitted.

3 116. USAA’s practice over the class period of denying full payment as set forth
4 in EORs stating that the bill exceeded a “reasonable amount for the service provided”
5 violated WAC 284-30-330 *et seq.* that required USAA to adopt and implement
6 reasonable procedures for investigating PIP insurance claims before refusing to pay
7 them in full.

8 117. USAA’s practice over the class period of denying full payment as set forth
9 in EORs stating that the bill exceeded a “reasonable amount for the service provided”
10 violated WAC 284-30-330 *et seq.* that required USAA to independently investigate a
11 PIP insurance claim before refusing to pay it in full.

12 118. USAA’s practice of having AIS do automated computerized reviews and
13 denials based on an EOR stating that the billed amount “exceeded a reasonable
14 amount for the service provided” added an additional term or condition for payment that
15 the billed amount be less than an arbitrary amount set by the computer.

16 119. USAA’s practice over the class period of using a misleading EOR that
17 falsely stated that the reimbursement amount was based on a determination that the
18 amount billed was in excess of the maximum reasonable charge for the service
19 violated the requirement in WAC 284-30-330 *et seq.* to not misrepresent facts relating
20 to coverage and USAA’s payment of the PIP claim.

21 120. USAA’s practices occurred in the course of its business and commerce.

22 121. USAA’s practices were part of a generalized course of conduct repeated
23 on thousands of occasions when provider bills were submitted to USAA for payment
24 under its PIP coverage over the pertinent class period.

25 122. USAA’s practice affected the public interest.

26 123. The business of insurance affects the public interest. RCW 48.01.030.

124. USAA's practices occurred in the course of its insurance business and adversely affected more than 1,100 Washington insureds.

125. USAA's practices over the Class period from September 1, 2015 to July 5, 2018 were unfair and in violation of the Washington Consumer Protection Act, Chapter 19.86 RCW *et seq.*

126. There were no benefits to insureds from USAA's practices. Any benefit to insureds from USAA's practice was substantially outweighed by the detriments to receiving reduced benefits on PIP claims.

127. USAA's practices were unfair and in violation of the Washington Consumer Protection Act, Chapter 19.86 RCW *et seq.*, in relationship to the requirements of the PIP statute and WAC 284-30-330 *et seq.*

128. The members of the putative Class of more than 1,100 insureds, including Plaintiff, sustained injury to their business and property caused by USAA's practice in the form of reduced benefits, investigative costs, and out-of-pocket expenses.

129. The members of the putative Class of more than 100 insureds, including Plaintiff, sustained damages that were proximately caused as a direct result of USAA's practices.

130. USAA is liable to Plaintiff and the Class for statutory, actual, and treble damages, prejudgment interest, attorney fees, and costs under the CPA, Chapter 19.86 RCW *et seq.*

B. Cause of Action: Breach of Contract

131. Plaintiff re-alleges each and every allegation as set forth in paragraphs 1 through 37 and 54 through 90 above.

132. USAA entered into an insurance agreement with Plaintiff and the Class that provides that USAA will pay its insureds' medical and hospital benefits, which

1 consists of medical payment fees for medically necessary and appropriate medical
2 services.

3 133. The policy defines medical payment fees to mean any amount that USAA
4 wants to pay.

5 134. The policy also states that USAA will pay the lesser of either the actual
6 amount billed or a reasonable fee for the service provided.

7 135. A fee is defined as reasonable if it falls within the range of fees generally
8 charged for a service in the geographic area.

9 136. However, even where USAA does not pay the actual amount billed, it
10 also does not pay all reasonable fees for the service provided as the term is defined in
11 the policy.

12 137. USAA does not pay all reasonable fees within the range of fees generally
13 charged for a service in the geographic area.

14 138. The database USAA relies upon to implement its RF methodology does
15 not ensure that USAA pays all fees that fall within the range of fees generally charged
16 for that service in the geographic area; rather, the database is based on a sample of
17 Medicare enrollees nationwide.

18 139. USAA's failure to pay either the lesser of either the actual amount billed
19 or a reasonable fee for the service provided as reasonable fees are defined in the
20 policy constitutes a breach of the policy agreement.

21 140. USAA's breach of the policy agreement proximately caused damage to
22 Plaintiff and the Class.

23 **C. Class Damages**

24 141. As a direct and proximate result of USAA's wrongful conduct described in
25 paragraphs 1 through 37, 54 through 90, and 114 through 140 above, Plaintiff and
26 members of the putative class of Washington insureds sustained injury to their property
27

1 and damages in an amount that will be established at trial, but which amount totals
2 substantially less than \$5,000,000. All relief available to the putative Class under
3 Washington law for damages, out of pocket expenses, attorney fees and any other
4 form of relief totals substantially less than \$5,000,000.

5 142. The injury and damages sustained by Plaintiff and putative Class
6 members include, but are not limited to, investigative expenses and out-of-pocket costs
7 incurred as a result of USAA's wrongful conduct.

8 143. As a direct and proximate result of USAA's breach as described in
9 paragraphs 1 through 37, 54 through 90, and 131 through 140 above, Plaintiff and
10 members of the putative class of Washington insureds were damaged in an amount
11 that will be established at trial.

12 144. Excluded from damages are reduced or denied bills submitted on PIP
13 claims where the policy limits on the claims were already exhausted at the time the bill
14 was submitted for payment to USAA. Damages include bills that were reduced or
15 denied when sufficient policy limits existed on the PIP claim to pay the bill when the bill
16 was submitted to USAA for payment. Damages include out of pocket expenses that
17 were incurred as a result of USAA's reduction or denial of a bill without regard for
18 whether and when policy limits became exhausted.

19 VII. RELIEF REQUESTED

20 145. WHEREFORE, Plaintiff and the putative class request that a judgment be
21 entered in their favor against Defendants on their Consumer Protection Act claims and
22 that the Court:

23 146. Certify the case as a Class Action under CR 23(a) and 23(b)(3) on behalf
24 of the alleged putative class of insureds;

25 147. Award actual damages to be established at trial as provided by the
26 Consumer Protection Act ("CPA"), Chapter 19.86 RCW *et seq.*;

1 148. Award treble damages as provided by the CPA, Chapter 19.86 RCW *et*
2 *seq.*;

3 149. Award Plaintiff a reasonable class representative fee in an amount
4 approved by the Court and award reasonable attorney's fees and costs as provided by
5 the CPA and class action law in amounts approved by the Court;

6 150. Award Plaintiff and the Class prejudgment interest at the rate of 12% per
7 annum as provided by the CPA, Chapter 19.86 RCW *et seq.*, or such other rate as
8 provided by law;

9 151. Award Plaintiff and the Class, their reasonable litigation expenses,
10 disbursements, and costs of suit;

11 152. Award Plaintiff and the Class damages sustained as a result of
12 Defendants' breach; and

13 153. Award Plaintiff and the Class appropriate injunctive and equitable relief.

14 DATED: May 15, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record as follows:

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DATED this 15th day of May, 2019, at Seattle, Washington.

s/ Rachael Tamngin
Rachael Tamngin, Legal Assistant